

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

Hrg. Date: Feb. 11, 2009  
Time: 11:00 a.m.

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In re

FAUSTINA BRENYA,

Case No. 08-47914-dem

Debtor

Chapter 13

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**NOTICE OF HEARING ON DEBTOR'S MOTION TO DISMISS CASE**

**PLEASE TAKE NOTICE**, that a hearing to consider the above captioned Debtor's Motion to Dismiss her Chapter 13 shall be conducted before Honorable Dennis E. Milton, U.S. Bankruptcy Judge, on February 11, 2009, at 11:00 a.m. at 271 Cadman Plaza East, Brooklyn, New York 11201, or as soon thereafter as counsel can be heard. The Debtor may request such other and further relief as is just and equitable.

**PLEASE TAKE FURTHER NOTICE**, that any objection to the Motion must be in writing, and must state with particularity the grounds for the objection. The objection must be filed with the Clerk of the Bankruptcy court electronically at [www.nyeb.uscourts.gov](http://www.nyeb.uscourts.gov) and a copy of the objection must be served upon or delivered to 1) Judge Milton's Chambers and 2) the undersigned counsel for the Debtor as to be received no later than three days before the hearing date.

Brooklyn, New York  
Jan. 26, 2009

S/ Norma Ortiz

Norma E. Ortiz, Esq. (No. 0748)

Ortiz & Ortiz, L.L.P.

127 Livingston Street

Brooklyn, New York 11201

Tel. (718) 522-1117

Debtor's Counsel

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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Debtor

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**DEBTOR'S MOTION TO DISMISS HER CASE**

Faustina Brenya, by and through her attorneys Ortiz & Ortiz, L.L.P., hereby states as follows:

Background

A. Prior Case

1. The Debtor filed a chapter 13 petition without an attorney on August 12, 2008. The Debtor obtained an order authorizing the payment of the filing fees in installments on August 13, 2008.
2. The Debtor requested the voluntary dismissal of her case on August 28, 2008. The Court denied that motion because of the Debtor's failure to pay the filing fee. On September 2, 2008, the Court entered an order denying the Debtor's motion with leave to renew upon payment of the filing fee.
3. On September 4, 2008, the Court entered an Order to Show Cause why the case should not be dismissed for failing to file a credit counseling certificate. On September 25, 2008, the Court entered an order dismissing the case on this ground. The Debtor did not file all of the requisite schedules in her prior case.
4. The Debtor lives in her home with her boyfriend of 22 years, their sons, her mother, and her sister. The Debtor is a hotel union worker.

5. The Debtor filed the instant case on November 20, 2008.

6. The Debtor has attempted to prosecute her case since the filing. She recently obtained an appraisal of her home that reflects a substantial loss in value since she purchased the property a few years ago. The appraisal reveals that the second mortgage on the home is fully unsecured. The Debtor intended to prosecute a plan that pays the first mortgagee in full. However, she has come to the conclusion that her household income will not support such a plan.

7. The Debtor intends to attempt to obtain a loan modification of her first mortgage. However, the first mortgagee will not enter into such negotiations while the bankruptcy case is pending.

Relief Requested

8. The Debtor requests that the Court dismiss her case pursuant to 11 U.S.C. § 1307. At the present time, the Debtor can not confirm her plan. Moreover, because the Debtor has no non-exempt assets, there would be no benefit to creditors if the case was converted to a chapter 7 case. For these reasons, the Debtor respectfully requests that the Court dismiss her case pursuant to 11 U.S.C. § 1307.

WHEREFORE, the Debtor requests that the Court grant the relief requested above and grant such other and further relief as the Court deems appropriate and just.

Brooklyn, New York  
Jan. 26, 2009

S/ Norma Ortiz  
Norma E. Ortiz, Esq. (NO 0748)  
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Debtor's Counsel

Debtor's Declaration

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Chapter 13

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Case No.: 08-47914-dem

Debtor.  
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**DECLARATION**

Faustina Brenya, the above-captioned debtor, hereby swears as follows:

1. For the reasons stated in the attached motion, I hereby request that the Court dismiss my case.

I swear under the penalty of perjury that the foregoing is accurate and true.

Dated: 1/26/09  
New York, New York

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Debtor